

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2010 FEB 22 PM 2:16 /

JEANNE HICKS, CLERK

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

) No. P1300CR20081339

) Div. 6

) **SUPPLEMENTAL**
) **MEMORANDUM REGARDING**
) **MOTION TO PRECLUDE LATE**
) **DISCLOSED EVIDENCE,**
) **WITNESSES AND EXPERTS**
) **AND TO DISMISS THE DEATH**
) **PENALTY AS A SANCTION**
) **UNDER ARIZONA RULE OF**
) **CRIMINAL PROCEDURE 15.7**

On February 5, 2010, Mr. DeMocker filed a Motion to Preclude Late Disclosed Evidence, Witnesses and Experts and to Dismiss the Death Penalty as a Sanction Under Arizona Rule of Criminal Procedure 15.7. After the parties had fully briefed the motion, the State, on February 18, 2010, with less than three months to trial, abruptly disclosed

1 two new late disclosed experts. Mr. DeMocker, by and through counsel, hereby moves to
2 add these experts to the original motion to exclude late disclosed experts and to dismiss
3 the death penalty. In the event the Court does not exclude these experts and dismiss the
4 death penalty, Mr. DeMocker requests that the Court require the State to make a proffer
5 regarding these witnesses' testimony at the hearing on March 2, in addition to proffers for
6 the 25 previously identified witnesses.

7
8 Additionally, at a hearing on February 19 in this matter, the State indicated for the
9 first time that intended to rely on particular statements of Mr. DeMocker at trial. The
10 defense seeks an order of the Court precluding the State from reliance on these
11 statements.

12 ARGUMENT

13 **1. Gregory Cooper**

14 The State should be prohibited from offering expert testimony from Gregory
15 Cooper. Mr. Cooper was not disclosed as an expert to the defense until February 18,
16 2010, with less than three months left before trial. Mr. Cooper is apparently being
17 substituted for the previously late disclosed expert Susan Kossler who was the subject of
18 prior motions to exclude. The defense has received no disclosure with respect to Mr.
19 Cooper other than his C.V. which was also disclosed on February 18. In addition to the
20 issue of late disclosure, the State has defied this Court's orders regarding identification of
21 what Mr. Cooper has relied on in reaching his conclusions pursuant to Rule 15.1.¹
22 Documents for Ms. Kossler were identified by broad category, without Bates numbers,
23 preventing the defense from identifying the documents she relied upon as required by the
24 Rule and this Court's orders.

25 Also, Mr. Cooper is identified as a "criminologist" and the subject matter of his
26 anticipated testimony has already been excluded by this Court's rulings on 404(b) matters

27 ¹ Of course, the defense actually has no idea what his "conclusions" may be at this point.

and in limine rulings. The defense has no idea what Mr. Cooper could properly testify to given his qualifications. Even if he was qualified to testify to something that continues to be relevant, his late disclosure and the failure of the State to comply with the Rules and the Court's orders have put Mr. DeMocker in the position of not being able to prepare to interview Mr. Cooper, prepare for his testimony, research and prepare any potential rebuttal experts or otherwise prepare for trial. Mr. Cooper should be precluded as a witness in this matter.

2. Sgt. C. Ray

The State should also be prohibited from offering expert testimony from Sergeant C. Ray. On February 18, Sergeant C. Ray was identified for the first time by the State as an expert in "Blue Star." Then, on February 19, Sergeant Ray was identified for the first time as an expert in "cell phone towers." The Defense has not received any disclosure on Mr. Ray with respect to cell phone towers. In fact the only disclosure the defense has received with respect to Mr. Ray is a one page report regarding Blue Star testing that indicated no results. There is no reason for the State to wait until there are less than three months before trial to identify an expert in cell phones. The State has had the cell phones in this case for over 15 months. The State has also failed to timely disclose the information that was in its possession regarding cell phones as was outlined in the original motion. To permit the State to do so now seriously prejudices Mr. DeMocker's ability to allocate his resources with three months to trial, to research and identify the appropriate experts and to prepare his defense. As a result of the State's late disclosure the defense does not know what Sgt. Ray relied on, does not know what the State proposes that he will testify about, is not in a position to prepare for any interview of Mr. Ray, and cannot research and retain experts to possibly rebut his testimony or prepare for trial. The State should not be permitted to present expert testimony from this late disclosed expert.

1 **3. Mr. DeMocker's Statements**

2 Mr. DeMocker originally requested by letter that the State identify which
3 statements of the defendant it intended to rely on at trial. The State ignored this request.
4 Mr. DeMocker then filed a Motion to Compel. In response, the State identified three
5 recorded interviews and 2700 recorded jail calls. At a hearing on this matter and in a
6 written order, this Court required the State to identify those jail calls it intended to use at
7 trial by date and time by February 6 and February 13 and warned that if not so disclosed
8 "they may be precluded." The Court also ordered the State to disclose any summaries of
9 jail calls that had been created. The State failed to comply and responded by stating that
10 it intended to rely on all statements made to a list of several people identified in the
11 original defense Motion to Preclude.

12 On January 28, the State disclosed on a CD for the first time to the defense over
13 1000 summaries of jail calls that the State had been generating since 2008. The State
14 also disclosed 12 other CDs and over 900 pages of Bates stamped disclosure including
15 several supplemental police reports. At a hearing on February 19, the State indicated that
16 one of those supplemental reports of jail call summaries included the summaries it
17 intended to rely on at trial. The State did not identify the report as containing the calls it
18 intended to rely on at trial when it made its disclosure or at any time prior to the hearing
19 on February 19. Nor did the State disclose these summaries in a timely way, since the
20 summaries were prepared beginning in 2008 but not disclosed until January 2010. The
21 State should be precluded from relying on these statements at trial based on its failure to
22 disclose these summaries until over a year after they were written and its failure to
23 comply with the Court's order requiring disclosure of the identification of the statements
24 they intend to rely on by February 13.

25 Also, the State's indication that they will rely on statements from a list (attached)
26 of people to whom the statement was made is not proper disclosure. Furthermore, this
27
28

1 list was disclosed for the first time on January 28, 2010 and is not timely. The State
2 should not be permitted to rely on any statements other than those properly identified,
3 which include only those recorded and made to investigators on July 2-3, 2008, October
4 23, 2008 and July 21, 2009. Mr. DeMocker requests that this Court order that the State is
5 precluded from relying on any statements made in any jail calls and on any statements
6 other than those made to investigators on July 2-3, 2008, October 23, 2008 and July 21,
7 2009.

8 **CONCLUSION**

9 Defendant Steven DeMocker, by and through counsel, hereby requests that this
10 Court prohibit the State from offering testimony from the late disclosed experts and from
11 relying on late identified or not properly identified statements and to strike the death
12 penalty.
13

14 DATED this 22d day of February, 2010.

15
16 By: 

17 John M. Sears
18 P.O. Box 4080
19 Prescott, Arizona 86302

20 OSBORN MALEDON, P.A.
21 Larry A. Hammond
22 Anne M. Chapman
23 2929 N. Central Avenue, Suite 2100
24 Phoenix, Arizona 85012-2793

25 Attorneys for Defendant

26 **ORIGINAL** of the foregoing
27 filed this 22d day of February, 2010
28 with:

1 Jeanne Hicks
2 Clerk of the Court
3 Yavapai County Superior Court
4 120 S. Cortez
5 Prescott, AZ 86303

6 **COPIES** of the foregoing hand delivered this
7 this 22d day of February, 2010, to:

8 The Hon. Thomas B. Lindberg
9 Judge of the Superior Court
10 Division Six
11 120 S. Cortez
12 Prescott, AZ 86303

13 Joseph C. Butner, Esq.
14 Prescott Courthouse basket
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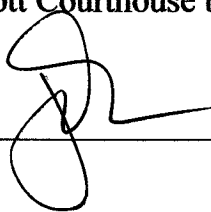
A handwritten signature in black ink, appearing to be 'JCB', is written over a horizontal line. The signature is stylized and cursive.

EXHIBIT A

Office of the Yavapai County Attorney

255 E. Gurley Street, Suite 300

Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

JEANNE A. CLARK
NIGHT DEPOSITORY

2010 JAN 29 PM 6:50

1 JOSEPH C. BUTNER, SBN 005229
Deputy County Attorney
2 ycao@co.yavapai.az.us

3 Attorneys for STATE OF ARIZONA

4 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

5 IN AND FOR THE COUNTY OF YAVAPAI

6
7 STATE OF ARIZONA,

8 Plaintiff,

9 vs.

10 STEVEN CARROLL DEMOCKER,

11 Defendant.

Cause No. P1300CR20081339

DIVISION 6

46th SUPPLEMENTAL DISCLOSURE BY
STATE, DATED JANUARY 29, 2010, OF
MATTERS RELATING TO GUILT,
INNOCENCE, OR PUNISHMENT

12 Pursuant to Rule 15.1(a) and (b) of the Arizona Rules of Criminal Procedure, the Yavapai
13 County Attorney's Office hereby files the following material and information within its possession
14 or control relative to guilt, innocence, or punishment, and further notifies the defendant(s) that said
15 material and information is either typed on this form, is attached hereto and incorporated herein by
16 reference (**) or is available to the defendant(s) for examination and reproduction at the office of
17 the Yavapai County Attorney (***). (*New additions to witnesses and expert witnesses are in bold.*)

18 RESPECTFULLY SUBMITTED this 28th day of January, 2010.

19 Sheila Sullivan Polk
YAVAPAI COUNTY ATTORNEY

20 By: 

21 Joseph C. Butner, III
22 Deputy County Attorney

23 Copy of the foregoing mailed/delivered
24 this 29th day of January, 2010 to:

25 John Sears
Attorney for Defendant

26 By Deb Cornell

Office of the Yavapai County Attorney

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2. All statements of the defendant and of any person who will be tried with defendant:

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See Yavapai County Sheriff's Office DR 08-029129 (**)

25

See Yavapai County Attorneys' Office DR 08-029129 (**)

26

(a) Any and all statements Defendant made to law enforcement and/or investigators on July 2-3, 2008, October 23, 2008, and July 21, 2009.

(b) Any and all statements Defendant made to Charlotte DeMocker.

Office of the Yavapai County Attorney

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- 1 (c) Any and all statements Defendant made to Katherine DeMocker.
- 2 (d) Any and all statements Defendant made to Jacob Janusek.
- 3 (e) Any and all statements Defendant made to Renee Girard.
- 4 (f) Any and all statements Defendant made to Barbara O'non.
- 5 (g) Any and all statements Defendant made to John Farmer.
- 6 (h) Any and all statements Defendant made to Katherine Dean-Warnett.
- 7 (i) Any and all statements Defendant made to Elizabeth Minard.
- 8 (j) Any and all statements Defendant made to Cynthia Woodring.
- 9 (k) Any and all statements Defendant made to Jennifer Rydzewski.
- 10 (l) Any and all statements Defendant made to Jackie Wheeler.
- 11 (m) Any and all statements Defendant made to Laura Spira.
- 12 (n) Any and all statements Defendant made to Anna Young.
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